



Mack H. Shumate, Jr.
Senior General Attorney, Law Department

November 14, 2007

220696

VIA E-filing

Mr. Vernon Williams, Secretary
Surface Transportation Board
395 E Street, S.W., Room 1149
Washington, D. C. 20024

**RE: Docket No. AB-33 (Sub-No. 209), Union Pacific Railroad Company -
Discontinuance of Operation - In Utah County, Utah (Elberta Line
Including Tintic Industrial Lead, Goshen Valley Branch and Iron King
Branch)**

Dear Mr. Williams:

Attached for filing in the above proceeding is Union Pacific Railroad
Company's ("Union Pacific") Reply to Chief Consolidated Mining Company's Protest
dated October 26, 2007

Sincerely

Mack H. Shumate, Jr.

Enclosure

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CERTIFICATE OF SERVICE
OF
UNION PACIFIC RAILROAD COMPANY'S ("UNION PACIFIC'S")
REPLY TO CHIEF CONSOLIDATED MINING COMPANY'S PROTEST
TO UNION PACIFIC'S APPLICATION FOR DISCONTINUANCE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Reply to Chief Consolidated Mining Company's Protest to Union Pacific's Application for Discontinuance of Service in Docket No. AB-33 (Sub-No. 209), over the Elberta Line extending from Spanish Fork to Iron King, including the Tintic Industrial Lead from milepost 5.52 near Spanish Fork to milepost 27.23 near Pearl; the Goshen Valley Branch from milepost 0.00 near Pearl to milepost 3.80 near Flora (equation: milepost 2.89 = milepost 2.98); and the Iron King Branch from milepost 0.00 near Flora to milepost 2.15 at Iron King, a total distance of 27.57 miles in Utah County, Utah, was served by first class mail (or by Certified Mail, if indicated) on the 14th day of November, 2007.

Significant Users
[49 CFR 1152.20(a)(2)(I)]

Deseret Mill & Elevators
C/O Mr. Rick LaFontaine
61 South 600 West
Kaysville, Utah 84037

Dak Maxseld
Staker & Parson Company
PO Box 3429
Ogden, UT 84409

Chief Consolidated Mining Company
15988 Silver Pass Road
Eureka, UT 84628

Thomas Gast
1275 Hightower Road
Wheatland, WY 82201

State Officials and Federal Agencies
[49 CFR 1152.20(a)(2)(ii)-(xii)]

(VIA CERTIFIED MAIL)
Honorable Jon M. Huntsman, Jr.
Governor – State of Utah
Utah State Capitol Complex
East Office Building, Suite E220
Salt Lake City, Utah 84114-2220

Utah Transportation Department
4501 S 2700 W, Box 143600
Salt Lake City, Utah 84114-3600

Department of Natural Resources
Division of Parks and Recreation
1594 W. North Temple
Salt Lake City, Utah 84114

National Park Service
Intermountain Region
12795 Alameda Pkwy.
Denver, CO 80228

U. S. Department of Transportation
Federal Railroad Administration
1120 Vermont Ave., NW
Washington, D. C. 20590

U. S. Railroad Retirement Board
844 North Rush Street
Chicago, IL 60611-2092

Utah State Clearing House
Office of Planning and Budget
State Capitol Complex, Suite E210
Salt Lake City, UT 84114-1547

Headquarters – Railway Labor
Executive Association
400 North Capitol Street, Suite 850
Washington, D. C. 20001

U. S. Department of the Interior
National Park Service
Recreation Resources Assistance Div.
1849 C. Street, N.W.
Washington, D. C. 20240

USDA Forest Service
1400 Independence Ave., SW
Washington, D. C. 20250-0003

MTMCTEA
Attn: Railroads for National Defense
720 Thimble Shoals Boulevard, #130
Newport News, Virginia 23560-2574

**U.S. Department of Agriculture
Chief of the Forest Service
4th Floor, NW, Auditors Building
14th Street & Independence Ave., S.W.,
Washington, D. C. 20250**

**Governor's Office of Economic
Development
Utah Governor's Office
Utah State Capitol Complex
East Office Building, Suite E220
PO Box 142220
Salt Lake City, UT 84118-2220**

**Utah Transit Authority
Kathryn Pett
Snell & Wilmer LLP
15 West South Temple, Suite 1200
Gateway Tower West
Salt Lake City, UT 84101**

**Utah State Cooperative Extension
Service -- Utah County Administration
Bldg. - 100 East Center, Room L600
Provo, UT 84606**

**Kelly Allen
CORP of Engineers-Regulatory
PO Box 17300
Ft. Worth, TX 76102**

**Public Service Commission
Heber M. Wells Building, 4th Flr.
160 East 300 South
Salt Lake City, UT 84111
Mail: PO Box 45585
Salt Lake City, UT 84145-0585**

Headquarters of Labor Organizations Representing Employees

**W. E. Morrow
General Chairman.BMWED
100 E. Sage Street, PO Box 850
Lyman WY 82937-0850**

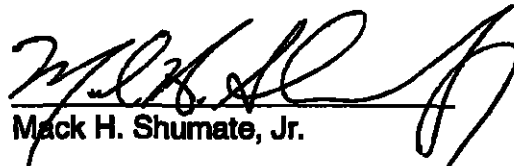
**C. M. Morgan
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3009 W. Colorado Ave., Suite C-1
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General Chairman BRS
1150 N. Mountain Ave., Suite 206
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General Chairman UTU
5990 SW 28th St., Suite F
Topeka, KS 66614-4181**

Mr. T. J. Donnigan
General Chairman BLET
P. O. Box 609
Pocatello ID 83204-0609
Overnight Address:
150 South Arthur, Suite 315
Pocatello, ID 83204

Dated this 14th day of November, 2007.



Mack H. Shumate, Jr.

Union Pacific Railroad Company
101 North Wacker Drive, Room 1920
Chicago, IL 60606
312/777-2055
312/777-2065(Fax)

**Before the
SURFACE TRANSPORTATION BOARD**

Docket No. AB-33 (Sub-No. 209)

**UNION PACIFIC RAILROAD COMPANY
-- DISCONTINUATION OF OPERATION--
IN UTAH COUNTY, UTAH
(ELBERTA LINE INCLUDING TINTIC INDUSTRIAL LEAD,
GOSHEN VALLEY BRANCH AND IRON KING BRANCH)**

**UNION PACIFIC RAILROAD COMPANY'S REPLY TO
CHIEF CONSOLIDATED MINING COMPANY'S PROTEST**

UNION PACIFIC RAILROAD COMPANY

**Mack H. Shumate, Jr., Senior General Attorney
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312/ 777-2055 (Tel.)
312/777-2065 (FAX)**

**Dated: November 14, 2007
Filed. November 14, 2007**

**Before the
SURFACE TRANSPORTATION BOARD**

Docket No. AB-33 (Sub-No 209)

**UNION PACIFIC RAILROAD COMPANY
-- DISCONTINUATION OF OPERATION--
IN UTAH COUNTY, UTAH
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GOSHEN VALLEY BRANCH AND IRON KING BRANCH)**

**UNION PACIFIC RAILROAD COMPANY'S REPLY TO
CHIEF CONSOLIDATED MINING COMPANY'S PROTEST**

This Reply of Union Pacific Railroad Company ("Union Pacific") is in response to the Protest ("Protest") of Chief Consolidated Mining Company ("Chief"), dated October 26, 2007, filed with the Surface Transportation Board October 29, 2007 and received by Union Pacific by mail on October 29, 2007. Capitalized terms used herein unless otherwise defined herein shall have the same meaning as in the Application for Discontinuance of Operations referenced above. Union Pacific replies as follows:

1. The Protest filed on behalf of Chief is signed by Thomas E. Gast, 15988 Silver Pass Road, Eureka, Utah 84628. The Protest is supported by a Verified Statement also prepared and signed by Thomas E. Gast as, "...an independent consultant employed by Chief in the areas of regulatory compliance and business development." (See Verified Statement, ¶1, p.1) The Union Pacific considers it awkward that the Protest ostensibly signed on behalf of Chief by an independent consultant is also verified by the same independent consultant. The Protest does not appear to be signed by an officer or employee of Chief. Even though Union Pacific

considers the independent consultant's projections as to future rail traffic to be highly speculative, there is in fact no written commitment by an officer, employee or legal representative of Chief that such future rail traffic will ever exist. It is not clear whether Chief is merely a land owner, developer or shipper.

2. The rules for participating in a protest for an abandonment were originally established in 1996. See, Surface Transportation Board (S.T.B) Abandonment and Discontinuance of Rail Lines and Rail Transportation under 49 U.S.C. 10903 decided December 9, 1996, service date December 24, 1996. Service Transportation Board decision 49 C F.R. parts 1105 and 1152 STB ex party No. 537. In 49 C.F.R. 1152.25 Participation In an Abandonment or Discontinuance Proceeding, it is specifically provided that protests must contain certain information as outlined in the Code of Federal Regulations. Of particular note is Protestant's failure to provide evidence showing that the applicant Union Pacific will receive revenue to operate the portion of the Line which Chief desires to keep in service at a level sufficient to provide an appropriate return on Union Pacific's investment for those operations.

The Verified Statement of Abdollah Ghazai, Track Planning Engineer for Union Pacific, states that the cost to rehabilitate the existing Line is conservatively at least \$4,333,632.45. (See Verified Statement Abdollah Ghazai, p.50 of Application) After the Line is rehabilitated the annual cost for normalized maintenance of the Line excluding the Goshen Branch averages out to \$6,371.00 per track mile per year. (See Verified Statement of Abdollah Ghazai, p.50 of Application) Chief is unable to provide evidence of a gross revenue stream for the rail movements it speculates may be generated in the future.

1. Chief does not have a specific number of carloads that will be generated in any particular year;
2. There are no contracts which Chief has negotiated for rail service involving the commodities to be brought into the facility for the water treatment operation or for the commodities ore and concentrate, to be removed from the facility by rail.

Negotiated rates do not exist because the projected traffic and destinations do not currently exist. Chief is not in a position to commit to any of the traffic volumes it has speculated to potentially exist for 2008, 2009 and 2010. Moving traffic to Chief's facilities and moving traffic from Chief's facilities is a necessary cost and a necessary component of any business plan. Without these costs the business plan is incomplete. Once Chief establishes these costs through negotiation with Union Pacific, it can then determine whether the revenue generated by Chief's proposed activities of selling ore and concentrate and water will provide enough revenue to the Union Pacific to justify not only rehabilitating the Line but for the normalized maintenance required for each year thereafter.

Union Pacific is not in a position to respond to Chief's failure to provide evidence showing that Union Pacific can operate the portion of the Line profitably including an appropriate return on Union Pacific's investment for those operations because Chief has not provided such evidence as part of this Protest and its case in chief. Chief goes so far as to indicate that it has no knowledge of what is needed to adequately calculate Union Pacific's return on investment. Such calculation is irrelevant in that the Board periodically determines the cost of capital for the railroad industry as a whole.

In an effort to be as conservative as practicable, Union Pacific did not include in its cost of rehabilitation of the Line the 3.8 miles beyond the tail room required to serve the Deseret Grain Facility. This is approximately 3.8 additional miles of track that would at minimum require rehabilitation in order to serve Chief. The track profile clearly indicates that the 3.8 miles includes 75-pound rail and 85-pound rail laid prior to 1920.

In Abdollah Ghazai's Verified Statement at p.29, 53, 63 and 64, his calculations for ordinary maintenance estimates and the cost to rehabilitate the Line, including both material and labor, did not include that portion of the Line extending beyond Milepost 26.00. Chief is of the opinion that servicing its operations would require inclusion of the Tintic Industrial Lead from Milepost 5.52 near Spanish Fork to Milepost 27.23 near Pearl and the Goshen Valley Branch from Milepost 0.0 near Pearl to Milepost 3.80 near Flora. Specifically, Chief does not need continued service on the Iron King Branch. Therefore, in order to serve Chief, an additional annual normalized maintenance cost of \$24,209.80 should be added to the current estimate of \$130,468.00 per year. The cost of rehabilitation of the Line including the additional 3.8 miles needed by Chief can be approximated. The additional 3.8 miles is approximately 18.5% of the Line. 18.5% of the rehabilitation cost for the Line of \$4,333,632.45 is an additional \$801,722.00. This assumes that the 3.8 mile segment only requires rehabilitation. If this 3.8 mile segment, which has not been used for over 30 years needs replacement, at the generally current rate of \$1,000,000.00 per mile, the replacement cost for the 3.8 mile segment could easily approach \$3,800,000.00. At minimum, the total rehabilitation cost for the Line and the 3.8 mile segment could reasonably reach approximately \$5,135,354.00. If the 3.8 mile segment needs replacement, the total cost could reach

approximately \$8,133,632.00.

3. Chief states, "mining of the known Burgin ore body has been suspended for the past thirty (30) years due to the combination of water disposal issues and low metal prices." (See Protest, ¶ 2, p 3) This statement confirms that Chief has neither needed nor shipped on the Line in the past thirty (30) years. According to Mr. Gast's Verified Statement, the last rail shipments of ore and concentrate consisting of lead/silver/zinc material occurred in 1978. (See Verified Statement, ¶ 4 p 1) These shipments were by Kennecott Mining Company ("Kennecott"), the former operator of Burgin and Trixie Mines. (See Verified Statement, ¶ 3, p.1) To Union Pacific's knowledge, Chief has never shipped railcars on the Line.

4. Chief states that, "(W)e own interests in mining properties, including the Burgin Mine and Trixie Mine. Neither mine is currently in production but these are subject to ongoing development efforts." (See Protest, ¶ 5, pp.1 and 2) There is no statement in the Protest by Chief that ore, concentrate or chemicals for water treatment will in fact be shipped on the Line.

5. In response to the question requiring a statement describing the Protestant's interests in the proceeding, Chief has provided several statements regarding Chief's plans for the future regarding the Tintic and East Tintic mining districts. (a) Chief commissioned an engineering study which indicates "...significant opportunities may exist and recommended a program of development to enhance the prospects of viably operating several projects including advancing the Burgin extension deposit through to a feasibility study and further development of the concept to sell potable water from a desalination plant fed by pumped water from the Burgin Mine." (See Protest, ¶ 1, p. 2) Chief's Protest goes on to say, that it is very close to resolving

its water disposal issues (See Protest, ¶ 4, p.2) And that, Chief has completed a water treatment plant feasibility study considering the Burgin Mine as a source of water for desalination. (See Protest, ¶ 4, p.2) The feasibility study contemplates inbound carloads of chemicals to treat the water in the desalination and reverse osmosis process. (See Protest, ¶ 5, p.2) Chief verifies that the ore body at the lower levels of Burgin Mine cannot be mined without dewatering the facility. (See Protest, ¶ 3, p.3) However, the Verified Statement of Thomas Gast at ¶ 4, p.1 states that Kennecott suspended operations at the (Burgin Mine) in 1978 due to the combination of water disposal issues and low metal prices. (See Verified Statement, ¶ 4, p.1) There is no indication in the Protest or the Verified Statement that operations planned by Chief for the Burgin Mine as opposed to the operations performed thirty (30) years prior by Kennecott would solve the water disposal issue In order to dewater the Burgin Mine, Chief states that it must commission a water treatment plant to dewater the Burgin ore body. (See Protest, ¶ 3, p 3)

(b) While Chief indicates that it has the necessary permits in place for mining the Burgin Mine, there is no statement that it has a commissioned water treatment plant for dewatering the mine. Moreover, assuming all permits and commissioning required for dewatering is obtained in the timeframe proposed by Chief, 2008 through and including 2010, there is no statement as to what actual rail traffic on the Line will be. Rather, rail traffic is merely projected. To quote Chief, "In summary, projected rail traffic includes 120 outbound concentrate carloads in 2008, 474 outbound concentrate carloads in 2009 and 1,040 outbound concentrate carloads and 325 inbound water treatment plant chemical carloads in 2010 and beyond " (See Protest, ¶ 4, p.3) All of Chief's statements are viewed from an engineering standpoint based on potential

capacities not proven demand verified by contracts with Chief's customers or suppliers.

There is no written verification of demand for the desalinated reverse osmosis water from the Burgin Mine by any industry or municipality. In fact, there is no indication that Chief has commenced negotiations with any industry or municipality for the purchase of the treated water.

(c) Chief proposes that the 325 inbound carloads for treating the Burgin Mine water should be considered reasonably foreseeable because of the known water deficit in the greater Provo area. (See Protest, ¶ 1, p.3) Not only is there no solid evidence to support the estimate of 325 inbound carloads commencing in 2010, there is no rate information for the transportation service which the Union Pacific can rely on as a revenue stream to fund the millions of dollars in capital investment required to handle the proposed rail traffic. The feasibility study, according to Chief, provides for construction of a pilot water treatment plant in the first half of 2008 with a current schedule of final design during the second half of 2008 with construction and commissioning of the actual plant during 2009 and full scale water delivery beginning in early 2010. (See Verified Statement, ¶ 3, p.2) This necessarily means that the speculated 325 inbound carloads of chemicals for water treatment purposes would not take place until 2010.

(d) With regard to the movement of ore and concentrate, Chief again talks in terms of "plans" rather than actual contracts. (See Verified Statement, ¶ 2, p.3) The concentrate, according to Chief, "...is planned to be rail shipped directly to Trail British Columbia or in containers for export to a Pacific Rim custom smelter." (See Verified Statement, ¶ 2, p.3)

The rail traffic quantities offered by Chief are not pursuant to contracts with

shippers or suppliers nor do they include rates to or from the destinations that would provide the revenue to the Union Pacific for such movements. The Surface Transportation Board ("Board") and its predecessor the Interstate Commerce Commission have consistently held that, "Mere speculation about future traffic is not a sufficient basis upon which to deny or revoke an abandonment or discontinuance exemption." (See CSX Transportation, Inc. - Abandonment Exemption - In Bell County, Kentucky and Claiborne County, TN, Docket No. AB-55 (Sub-No. 478X) (ICC served August 5, 1994) and Norfolk Southern Company Railway Company - Discontinuance of Trackage Rights Exemption - In Bell County, KY and Claiborne County, TN, Docket No. AB-290 (Sub-No. 138X) (ICC served August 5, 1994) at 2.

In Paducah and Louisville Railway, Inc. - Abandonment Exemption - In McCracken County, KY, Docket No. AB-468 (Sub-No. 5X) (STB served June 20, 2003 at 2) the Board held that,

"The P&L (the railroad) had produced unrefuted evidence that revenues are inadequate to cover the cost of operation and the projected cost of line rehabilitation. - Additionally, the low traffic levels in recent years do not support any prediction of significant traffic increases in the future. Boral's (the shipper) assertion that traffic on the rail line will increase once it expands its business in the next few years is speculative and unsupported by any evidence. Speculation that additional traffic might materialize in the future does not justify forcing the railroad to incur losses by operating this rail line."

The situation with regard to the subject Discontinuance of Operations is similar to that in the Paducah and Louisville Railway, Inc. Abandonment Exemption. Chief's assertion that there will be additional rail traffic on the Line is not supported by any concrete evidence, and is clearly speculative based on the clear language of Chief's Protest. All references to increases in rail traffic on the Line are based on feasibility studies, plans, reasonably foreseeable needs and projections. Chief has presented no

demonstrated need for rail service on the Line pursuant to any contract or arrangement between Chief and any customer or shipper for either inbound or outbound rail movement at any price level. The mere assertion that a shipper might use a line in the future which is unsupported by evidence is entirely speculative. See New York Central Lines, LLC - Abandonment Exemption - In lake County, OH, Docket No. AB-565 (Sub-No.11X) and CSX Transportation Inc. - Discontinuance of Service Exemption - In Lake County, OH, Docket No. AB-55 (Sub-No. 617X) (STB served January 31, 2003).

6. The predictions made by Chief's consultant, Mr. Thomas E. Gast, are based on possibilities not contracts nor negotiated obligations with Chief's customers and suppliers. They are speculative in nature and unsupported by any evidence that the predictions will in fact ever come to pass. The Board must make reasonable findings as to the credibility of the speculation or establish in other than a merely conclusionary manner, a rational link between the reasonable fact finding and the ultimate decision. See Bowman, 419 U.S. at 285, 95 S.Ct. at 441. For example, there is no evidence in Chief's Protest that water from the Burgin Mine that had been treated at the proposed water treatment plant would be purchased by any municipality or industry. The Union Pacific has no assurance that any of the proposed inbound movements of chemicals would ever be needed if there is no purchaser for the treated water.

7. In determining to allow abandonment or discontinuance of operations, the Board is required to waive an inconvenience that might be suffered by shippers and affected communities if the line were abandoned against the cost that would be incurred by the railroad and interstate commerce if the line continued in operation. See, Colorado v. United States, 271 U.S. 153, 168, 46 S.Ct. 452, 455-56, 70 L.Ed 878

(1926).

8. CSX Transportation, Inc. v. Surface Transportation Board, 96 F.3d 1528 U.S.App.D C 80, October 11, 1996 is somewhat similar to this discontinuance in that it involves the owner of mining property and that shipper's desire to preserve a rail line for future rail traffic based on speculation of future traffic. Ultimately, it was decided that the line should be abandoned because the evidence of future rail traffic was speculative.

RESPONSE TO REBUTTAL MATERIALS SUBMITTED BY UNION PACIFIC

1 Maintenance and Rebuild. Chief alleges that the Application contains no information regarding the maintenance history if the Elberta Line and raises the question that the deferred maintenance of the Line during its active service period previous to 2003 is the reason the Line needs to be completely rebuilt. In order to serve Chief, the Line requires rehabilitation in order to accommodate today's heavier loads and railcars. (See Verified Statement Abdollah Ghazai, at p-50) Approximately eighteen (18) miles of the Line consists of 75 and 85-pound rail.

2. Economic Model. Chief questions the need in the Forecast Year for two (2) trains weekly. Deseret Grain's business during the Base Year only required ten (10) moves in that, unit trains of wheat in and corn out were required to satisfy the shipping need. The proposal by Deseret Grain to commence dairy farm support operations requires twice weekly moves for dairy feed.

3. Combined Historic and Environmental Report Even using a Forecast Year contemplating 348 carloads with a general factor of four (4) truckloads to one (1) railcar load, the highway volume works out to less than four (4) truckloads per day, per

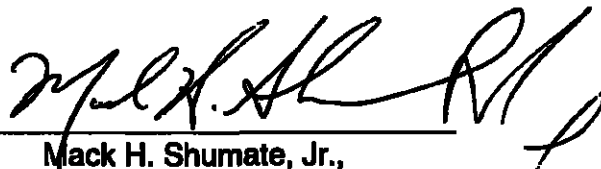
year This impact would be further mitigated in that the one hundred four (104) trips for the Forecast Year, consisting of five hundred twenty (520) hours of locomotive time which would not occur. In addition, if concentrate is planned to be rail shipped in containers for export to a Pacific Rim custom smelter as indicated by Chief in the (Verified Statement of Thomas Gast in ¶ 2, p.3), such containers would in fact be moved by truck to an appropriate intermodal facility on Union Pacific or another railroad for proper handling and further disposition by rail. The Elberta Line has no intermodal facility located on it.

SUMMARY

The Union Pacific is seeking discontinuance not full abandonment of the Elberta Line. If Chief or any other potential shipper desires to make use of the Line, they can always bring a proposal forward and make the economic case to the Union Pacific showing how potential traffic volumes and revenues would warrant the rehabilitation of the Line and restoration of service. It is important to note that Deseret Grain, the only active shipper on the Line, has not filed a protest in this Discontinuance Application. Union Pacific needs to stop the drain on its resources as a common carrier with regard to the subject Line.

Respectfully submitted,

UNION PACIFIC RAILROAD COMPANY

By: 
Mack H. Shumate, Jr.,
Senior General Attorney